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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,040	12/30/2003	Michael Allan Burleson	03 PAT 198	8270
27645	7590	02/09/2005	EXAMINER	
ALWORTH LAW & ENGINEERING 505 CUMBERLAND ROAD TYLER, TX 75703-9324			D ADAMO, STEPHEN D	
			ART UNIT	PAPER NUMBER

3636

DATE MAILED: 02/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

3E

 <b>Office Action Summary</b>	<b>Application No.</b> 10/749,040	<b>Applicant(s)</b> BURLESON, MICHAEL ALLAN	
	<b>Examiner</b> Stephen D'Adamo	<b>Art Unit</b> 3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.                                                |

## DETAILED ACTION

### *Information Disclosure Statement*

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is indeterminate as to whether applicant's independent claims, each individually assessed as a whole, are drawn to an apparatus per se or to the combination of an apparatus and *a recreational vehicle including a starboard side, a port side, a frame and a seatback control circuit to which the seatback is supported*. The conclusion is reached for the reason that the opening recitation of the preamble in applicant's claim sets forth that the claimed invention is to "an apparatus" or *a rotatable seatback*. This opening recitation is followed by a recitation that the claimed apparatus is "*for use on a recreational vehicle*". However, further within the claims, the applicant positively claims

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*“the recreational vehicle”*. The examiner is treating the claims on the merits of the rotatable seatback, or sub combination, as claimed in the independent claims.

Claim 9 recites the limitation “said latch mechanism” on line 7, which lacks antecedent basis.

### ***Claim Objections***

3. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 14 and 15, immediately following claim 11, have been renumbered to claims 12 and 13.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Ware (4,313,639).

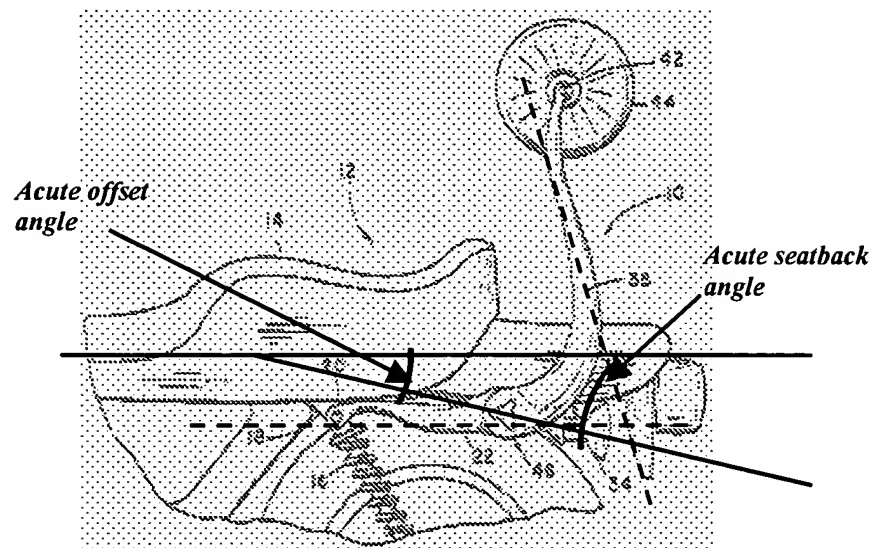
Ware discloses a motorcycle backrest comprising a seatback 10 having an upright position and a boarding position, as seen in Figures 2 and 4. The seatback also includes a rotational means 46 for revolving the seatback between the upright and boarding position and a latching means 48 for retaining the seatback in an upright position. Further, a

mounting means for attaching the seatback to the motorcycle. The rotational means 46 is attached between the seatback and the mounting means. As seen in the Figure below, Ware also teaches of an extended longitudinal axis which lies between the top and bottom of the seat and aligning generally with the direction of travel of the motorcycle. The rotational axis also intersects the extended longitudinal axis at an acute offset angle.

Regarding claim 3, the mounting means is attached to the frame of the vehicle via bolts 20.

Moreover, regarding claim 4, the mounting means is attached to the seat of the vehicle via the bolts 20 and frame 18.

Regarding claims 5-7, the seatback also comprises a seatback plate having an upper section or support arms 38, 40 and a lower section or frame arms 22, 24. A pad 44 is attached to the upper section 38, 40. As seen in the figure below with the dashed lines, there is an acute seatback angle measured between the upper and lower sections. The rotation means is attached to the lower section of the seatback plate. Moreover, the sum of the offset angle and the seatback angle is less than 120 degrees.



Claims 1-4, 9, and 14-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Mesinger (1,240,587).

Mesinger discloses a saddle for motorcycles comprising a seatback 27 having an upright position and a boarding position (Figure 4), rotational means for revolving the seatback between the upright position and the boarding position. Further, Mesinger teaches of latching means 24, 25 for retaining the seatback in an upright position and mounting means 6 for attaching the rotatable seatback to the vehicle. The rotational means is attached between the seatback 27 and the mounting means 6. Mesinger also teaches of an extended longitudinal axis which lies between the top and bottom of the seat and aligning generally with the direction of travel of the motorcycle. The rotational axis also intersects the extended longitudinal axis at an acute offset angle.

In regards to claim 3, the mounting means 6 is attached to the frame 4 of the vehicle.

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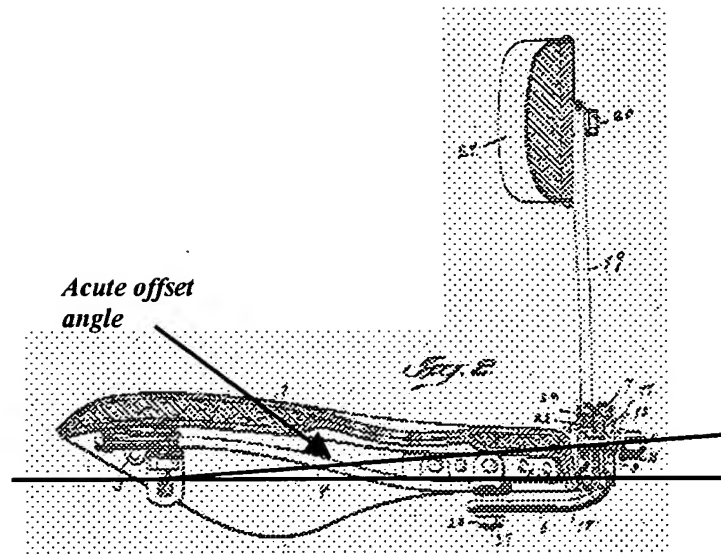
Regarding claim 4, the mounting means 6 is attached to the seat of the vehicle through frame member 4.

With respect to claim 9, the rotational means comprises a swivel plate 11, a swivel 19, and a swivel pin 10. The swivel is received by the swivel plate 11 and held within the swivel plate by the swivel pin 10. The swivel freely rotates within the swivel plate providing the latch mechanism 24, 25 is not engaged.

Regarding claim 14, the seatback of Mesinger comprises a seatback having an upright position and a boarding position (Figure 4), a swivel plate 11, a swivel 19, a swivel pin 10, latch pins 24, a quick release knob 15, and a spring 13. Furthermore, the mounting means 6 is for attaching the rotatable seatback to the vehicle. The rotational means is attached between the seatback and the mounting means 6. Moreover, the spring loads the latch pin such that the latch pins retain the seatback in an upright position until released by pulling on the quick release knob 15 being connected to the latch pins via the plates 8 or 11. The swivel 19 is received by the swivel plate 11 and held within the swivel plate by the swivel pin 10, such that the swivel freely rotates within the swivel plate thereby revolving the seatback between the upright position and the boarding position.

In regards to claim 15-17, refer to the rejection of claims 2-4 above.

Regarding claim 18, as seen in the Figure below, the offset angle is less than 20 degrees and greater than 0 degrees.



Claims 1 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Stark et al. (5,997,088).

Stark discloses a vehicle seat comprising a backrest 2a having an upright position and a boarding position, rotational means 30 for revolving the seatback between the upright and boarding positions, latching means 27 for retaining the seatback in the upright position, and mounting means 12 and 13 for attaching the rotatable seatback to the recreational vehicle via base section 11. The rotational means is attached between the seatback and the mounting means. Moreover, the latching means further comprises a latch pin 27 coupled to a quick release knob 23 and a spring 25. Wherein the spring loads the latch pin 27 such that the latch pin retains the seatback in the upright position until released by pulling and rotating the quick release knob.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:



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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ware (4,313,639).

Ware discloses a motorcycle backrest comprising a seatback 10 having an upright position and a boarding position, as seen in Figures 2 and 4. The seatback also includes a rotational means 46 for revolving the seatback between the upright and boarding position and a latching means 48 for retaining the seatback in an upright position. Further, a mounting means for attaching the seatback to the motorcycle. The rotational means 46 is attached between the seatback and the mounting means. As seen in the Figure below, Ware also teaches of an extended longitudinal axis which lies between the top and bottom of the seat and aligning generally with the direction of travel of the motorcycle. The rotational axis also intersects the extended longitudinal axis at an acute offset angle. However, Ware discloses the same invention except Ware fails to expressly disclose an electromagnetic locking means. Yet, it would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the latching means of Ware with an electronic or electromagnetic locking means, since it has been held that broadly providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art. Moreover, Regarding claim 12, the mounting means is attached to the frame of the vehicle via bolts 20.

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Moreover, regarding claim 13, the mounting means is attached to the seat of the vehicle via the bolts 20 and frame 18.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schnitzenbaumer (6,206,399), Bonfilio (6,068,334), Zachary (5,501,168), Hanagan (4,953,911), Hirano et al. (4,506,754), Bochynsky (3,887,231), George (3,822,917) and Petersen (2002/0011745) all show various features of the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen D'Adamo whose telephone number is 703-305-8173. The examiner can normally be reached on Monday-Thursday 6:00-3:30, 2nd Friday 6:00-2:30.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pete Cuomo can be reached on 703-308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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February 4, 2005

  
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